

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Inter-carrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**COMMENTS OF
THE AMERICAN CABLE ASSOCIATION
ON THE CENTURYLINK PETITION
FOR A LIMITED WAIVER OF 47 C.F.R. § 54.312(b)**

The American Cable Association (“ACA”), by its attorneys, respectfully submits these Comments in response to CenturyLink’s petition for a limited waiver of 47 C.F.R. § 54.312(b).¹

This rule provides that price cap local exchange carriers accessing Connect America Fund (“CAF”) Phase I incremental support must use such support only to deploy broadband to locations identified as unserved by fixed broadband on the current version of the National

¹ CenturyLink Petition for Waiver, WC Docket No. 10-90 et al. (filed June 26, 2102) (“*Petition*”); *see also* Wireline Competition Bureau Seeks Comment on CenturyLink Petition for Waiver, WC Docket Nos. 10-90, 05-337, Public Notice, DA 12-1007 (June 27, 2012) and *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011); *pets. for review pending sub nom. In Re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

Broadband Map (“Map”). CenturyLink seeks a waiver to use Phase I support to serve locations that the Map indicates are served by fixed wireless providers (Wireless Internet Service Providers or “WISPs”) but that it contends are actually unserved.² It also seeks to serve locations served by WISPs where it contends the service offered by these providers does not meet defined service characteristics.³

On April 25, 2012, the Commission simultaneously announced support amounts for CAF Phase I incremental support for price cap LECs⁴ and issued a Second Order on Reconsideration amending or clarifying its rules (§ 54.312(b)) regarding the locations where the price cap LECs could be served with Phase I support. The Commission in this order also declined requests from the price cap LECs that would enable them to challenge locations indicated as served on the Map or deem service offered by other broadband providers to be inadequate.⁵ Specifically, the Commission:

1. Amended its rules to permit a price cap LEC to deploy “locations identified on the National Broadband Map as served if the Map reflects that the only provider of fixed broadband to the location is the incumbent carrier itself, the locations are in fact unserved by broadband, and the carrier makes the certifications required by section 54.312(b)(3) of our rules.”⁶

2. Clarified “that if the data underlying the Map show that a location is not served by a particular provider, then, for purposes of this rule [section 54.312(B)(3)], the location is ‘shown as unserved’ by that provider.”⁷

² *Petition* at 2.

³ *Id.*

⁴ *Wireline Competition Bureau Announces Support Amounts for Connect America Fund Phase One Incremental Support*, Public Notice, WC Docket Nos. 10-90, 05-337, DA 12-639 (Apr. 25, 2012).

⁵ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Second Order on Reconsideration, FCC 12-47 (rel. Apr. 25, 2012).

⁶ *Id.*, ¶ 9.

⁷ *Id.*, ¶ 11.

3. Declined to amend its rules to enable a price cap LEC to deploy to locations indicated on the Map as served by another broadband provider if it provides evidence that these locations are in fact unserved.⁸

4. Declined to amend its rules to enable a price cap LEC to deploy to locations that are served by another broadband provider “but where the service offered by that other provider does not meet defined service characteristics [related to speed, usage limits, and price].”⁹

In its waiver petition, CenturyLink essentially asks the Commission to reconsider the Second Order on Reconsideration. As discussed above, it seeks permission to use Phase I support to serve locations where (1) it can demonstrate that a WISP in fact is not offering service even though the location is indicated as served on the Map, and (2) a WISP provides coverage but not with certain service characteristics.

Prior to the release of the Second Order on Reconsideration, ACA met with Commission staff and proposed that it establish a process whereby all broadband providers could ensure Phase I support would go to locations that were truly unserved.¹⁰ The Commission believed such a process was burdensome and instead decided that information provided on the Map, regardless of its accuracy, would control. ACA continues to submit that such a process is warranted and

⁸ *Id.*, ¶ 13.

⁹ *Id.*, ¶ 14.

¹⁰ *See e.g. Ex Parte* Communication of American Cable Association and National Cable & Telecommunications Association, WC Docket Nos. 10-90 et al. (Mar. 29, 2012) (“ACA and NCTA submit that, if the Commission is to alter the method to identify areas that are unserved in the *CAF Order*, it must establish a transparent and equitable process that places equal burdens of proof on all parties and permits equal opportunities to rebut evidence. The Commission should start with the presumption that the NBM [Map] is correct. An incumbent LEC that seeks to rebut that presumption must identify the portion of the census block it believes is unserved, and it must provide evidence for that assertion. Interested parties would then be given a limited opportunity to rebut the incumbent’s showing or the findings of the NBM. Because this process is essentially the same approach that NTIA used in awarding ARRA funding, it should be familiar to most parties and relatively straightforward to implement.”).

notes that CenturyLink and other price cap LECs recently submitted comments consistent with that approach.¹¹

That said, in its petition, CenturyLink now effectively asks that it be able to “appeal” the Map’s determination. It seeks to have the Commission declare a location indicated as served on the Map only by a WISP as unserved if “a state has not independently verified WISP coverage areas” and “objective indicia demonstrate that the WISP could not plausibly serve the areas.”¹² While ACA supports efforts to ensure the Map is accurate and locations are in fact served or unserved, it would be inequitable for the Commission to grant CenturyLink’s waiver request at this time prior to establishing an equitable and transparent process where all broadband providers could participate in ensuring the accuracy of whether or not a location is served.

As for CenturyLink’s request to permit it to access support where a WISP does not meet certain service characteristics, ACA submits that this proposal raises fundamental definitional issues that affect the entire industry and thus are not appropriate to deal with in a waiver petition. Rather, these should be dealt with in a new rulemaking, especially since the Commission effectively just declined to adopt CenturyLink’s proposal.

¹¹ Comments of United States Telecom Association et al., WC Docket Nos. 10-90, 05-337 at 35-36 (July 9, 2012).

¹² *Petition* at 2. ACA has not yet established that the locations CenturyLink indicates are served only by a WISP are not also served by another fixed provider.

For these reasons, CenturyLink's petition should be denied.

Respectfully submitted,



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